CENTER FOR CAPITAL MARKETS COMPETITIVENESS
OF THE
UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
202/463-5609 • 202/955-1152 FAX
david.hirschmann@uschamber.com

July 9, 2008

Co-Chairman Arthur Levitt, Jr.
Co-Chairman Donald Nicolaisen
Advisory Committee on the Auditing Profession
Office of Financial Institutions Policy
Room 1418
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Draft Report and Addendum of the Advisory Committee on the Auditing Profession

Dear Co-Chairmen Levitt and Nicolaisen and members of the Advisory Committee:

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. We appreciate the opportunity to comment on the Draft Report and Addendum of the Advisory Committee on the Auditing Profession ("Committee") to the U.S. Department of the Treasury ("Treasury").

We applaud the Committee for its efforts to address the significant challenges faced by audit firms. Auditors of public companies play an essential role in the operation of our capital markets. The assurance audit firms provide on the financial information of public companies enhances the confidence of investors and other users of this information. The Chamber is committed to supporting policies that enhance the value of audits and ensuring the long-term viability of the auditing profession.

The audit profession has experienced significant changes in the past decade and the growth and expansion of the global marketplace will undoubtedly accelerate the pace of change. The improved quality of audit work is largely attributable to the profession's efforts, which have been enhanced by the contributions of the Sarbanes-

Oxley Act of 2002. However, our current legal and regulatory environment presents unique liability challenges that threaten the sustainability of audit firms and integrity of our capital markets.

We agree with the Committee that increased monitoring of the catastrophic liability risk that audit firms face is a necessary step in addressing this risk. However, we believe that the Committee's efforts will fall short of the broader Committee mandate if stronger recommendations, aimed at preventing a catastrophic audit firm failure, are not proposed. Auditing firms have become targets for mega-lawsuits to insure against business losses. A single criminal indictment – even without a conviction – can result in the rapid destruction of thousands of jobs. Further, the current level of liability exposure prevents new players from entering the international market and threatens existing firms. These risks are so uncertain that it has effectively rendered the profession uninsurable.

The investing public's confidence has been largely vested in a handful of private partnerships that are subject to extraordinary legal and regulatory challenges. We believe that the risk of a criminal indictment or a civil "mega-claim" destroying a firm is real and that the rapid loss of yet another firm would lead to a significant problem in our capital markets. The latest figures indicate that there are 41 pending claims in excess of $500 million against the auditors of U.S. public companies, aggregating to more than $100 billion.

The Chamber believes that every reasonable effort should be made to ensure the sustainability of the audit profession, both domestically and globally. To this end, we have put forth several proposals that would enable U.S. companies, auditors, and regulators to agree to reasonable limits on an auditor's liability. These include:

- Focus criminal indictments on culpable individuals and not the entire firm

- Amend the McNulty Memorandum to advise prosecutors of the ramifications of a criminal indictment to audit firms, public companies, and shareholders

- Consider arbitration as an alternative dispute resolution mechanism

- Consider setting high-level caps on audit firm liability

We believe that liability reform must also be addressed on an international basis due to the global nature of the sustainability gap. The interconnectedness of large audit networks exposes U.S. markets and investors to audit firm collapses in foreign markets and vice-versa. Various remedies to the unacceptably high risk of firm failure should be contemplated on a global level through careful dialogue with foreign regulators.

We recommend that the Committee establish greater communication with international regulators to harmonize approaches to address the risk that another global firm will collapse. The European Commission recently concluded in its Recommendation to Member States that the current liability exposure of firms and the resulting collateral ramifications warrant the imposition of liability caps. Indeed, these liability burdens are much heavier in the U.S. than in Europe or Asia. Lawmakers and policy-setters in the U.S. must similarly recognize the need to consider high-level caps if other remedies do not quickly reduce the current risk of failure and the consequent harm to the capital markets globally.

We urge the Committee to carefully evaluate the quantitative data available, acknowledge the real threats posed by liability exposure, and propose strong changes that would protect investors, companies, and our entire capital markets system from the destruction of another global auditing network. We believe there will be significant long-term implications for our capital markets if the Committee does not articulate a clear recognition of the sustainability problem and extend further efforts to address this issue. In the end, ensuring the future viability of the audit profession is critical to the competitiveness of the U.S. capital markets and the stability of our global economy.

Thank you for your consideration.

Sincerely,

David T. Hirschmann